

AMENDED IN SENATE AUGUST 21, 2003

AMENDED IN SENATE JULY 15, 2003

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AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1093

Introduced by Assembly Member Lieber
(Coauthors: Assembly Members Hancock, Koretz, and
Longville)
(Coauthors: Senators Romero and Soto)

February 20, 2003

An act to add Section 19830.5 to the Government Code, and to add Article 13 (commencing with Section 10480) to Chapter 2 of Part 2 of the Public Contract Code, relating to living wages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1093, as amended, Lieber. Living wage.

Existing law prescribes requirements relating to health care coverage provided by employers subject to local living wage laws, and prescribes requirements relative to payment of prevailing wages on public works.

This bill would enact provisions known as the California Living Wage Act. This bill would require the state, and any qualified contractor and qualified subcontractor, as defined, that performs work under a qualified contract, as defined, for a state agency, to pay not less than a living wage, as defined, to each of its employees, as defined, performing work under that contract, as provided. This bill would also authorize an

employee to sue to recover unpaid wages, costs, and attorney's fees from a qualified contractor or qualified subcontractor, as specified. This bill would also require certain provisions to appear in a qualified contract and any subcontract to that qualified contract.

This bill would also require a contractor or a subcontractor that is performing work under a qualified contract to provide access to certain records to the Director of Industrial Relations or his or her designee upon request, as specified, and would authorize the Department of Industrial Relations to conduct audits of employee payroll records of these contractors and subcontractors. This bill would also impose monetary penalties and bar a contractor or a subcontractor from contracting with a state agency if that contractor or subcontractor is required to pay a living wage and intentionally fails to do so, as provided. This bill would create a state-mandated local program by requiring a contractor or a subcontractor that is performing work on a qualified contract to certify under penalty of perjury, among other items, whether the contractor or subcontractor is a qualified contractor or qualified subcontractor.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Wages for the bottom 10 percent of wage earners fell
- 4 dramatically by 9.3 percent between 1979 and 1999.
- 5 (b) Underpaying employees tends to inhibit the quality and
- 6 quantity of services by fostering high turnover, absenteeism, and
- 7 lackluster performance.
- 8 (c) Local governments throughout the country have adopted
- 9 living wage ordinances, including the counties of Santa Clara and
- 10 Los Angeles, and the Cities of San Jose, Oakland, Hayward, and
- 11 Los Angeles.



(d) Higher wages may actually help firms reduce turnover and fill vacancies and can also lead to greater worker productivity by improving morale and overall job satisfaction.

(e) Studies on existing living wage ordinances have found early evidence that relatively little of the extra cost in labor has been passed on to consumers or the cities with whom they contract.

(f) The state should promote an employment environment where wages are adequate to avoid the need for social services to be provided by the state.

SEC. 2. This act shall be known and may be cited as the California Living Wage Act.

SEC. 3. Section 19830.5 is added to the Government Code, to read:

19830.5. (a) As used in this section, “living wage” means ten dollars (\$10) per hour if the employee receives health insurance coverage, or twelve dollars (\$12) per hour if the employee does not receive health insurance coverage. These amounts shall be adjusted annually by the Department of Finance to reflect any increase in the California Consumer Price Index, or by an amount that may be determined annually as an adequate living wage standard by the Division of Labor Statistics and Research of the Department of Industrial Relations.

(b) (1) The state shall pay not less than a living wage to each of its employees.

(2) For purposes of this section, “employee” means a person that is employed by the state on a full-time, part-time, temporary, or seasonal basis.

(c) All or any part of the provisions of this section may be waived in a bonafide collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of any provision of this section.

SEC. 4. Article 13 (commencing with Section 10480) is added to Chapter 2 of Part 2 of the Public Contract Code, to read:

Article 13. Living Wage

10480. As used in this article:

1 (a) “Employee” means a person that is employed on a
2 full-time, part-time, temporary, or seasonal basis by a qualified
3 contractor or qualified subcontractor to perform work under a
4 qualified contract.

5 (b) “Living wage” means ten dollars (\$10) per hour if the
6 qualified contractor or qualified subcontractor provides health
7 insurance coverage to each of its employees performing the
8 qualified contract or twelve dollars (\$12) per hour if the qualified
9 contractor or qualified subcontractor does not provide health
10 insurance coverage to each of its employees performing the
11 qualified contract. These amounts shall be adjusted annually by
12 the Department of Finance to reflect any increase in the California
13 Consumer Price Index, or by an amount that may be determined
14 annually as an adequate living wage standard by the Division of
15 Labor Statistics and Research of the Department of Industrial
16 Relations.

17 (c) (1) “Qualified contract” means a contract with a state
18 agency that meets all of the following criteria:

19 (A) The contract is for services.

20 (B) The cost of the contract to the state agency is fifty thousand
21 dollars (\$50,000) or more.

22 (C) Work under the contract will be performed by the
23 employees of a qualified contractor, a qualified subcontractor, or
24 both.

25 (2) Notwithstanding paragraph (1), a “qualified contract” does
26 not include any of the following:

27 (A) A contract entered into before January 1, 2004.

28 (B) A contract entered into on or after January 1, 2004, for
29 which a request for a proposal or bid on the contract was advertised
30 before January 1, 2004.

31 (C) A contract for which a request for a proposal or bid on the
32 contract is prepared to be advertised on or before April 1, 2004.

33 (D) A contract entered into before January 1, 2004, that has an
34 option to be renewed on or after that date, unless the terms of the
35 contract are renegotiated on or after January 1, 2004.

36 (E) A contract described in Section 19134 of the Government
37 Code.

38 (F) *A contract with a health facility, as defined in Section 1250*
39 *of the Health and Safety Code, that provides services to Medi-Cal*
40 *patients.*

1 (G) *A contract with a provider, as defined in Section 14043.1*
2 *of the Welfare and Institutions Code, that is enrolled in the*
3 *Medi-Cal program pursuant to Article 1.3 (commencing with*
4 *Section 14043) of Chapter 7 of Part 3 of Division 9 of the Welfare*
5 *and Institutions Code.*

6 (d) “Qualified contractor” means a contractor that employs
7 100 or more employees.

8 (e) “Qualified subcontractor” means a subcontractor that
9 employs 100 or more employees.

10 (f) “Department” means the Department of Industrial
11 Relations.

12 (g) “Director” means the Director of Industrial Relations.

13 10481. (a) A qualified contractor and a qualified
14 subcontractor that are performing work under a qualified contract
15 shall pay each of its employees performing work under that
16 contract not less than a living wage while the employees are
17 performing work under that contract.

18 (b) (1) A qualified contract shall contain all of the following
19 provisions:

20 (A) If the contractor is a qualified contractor, a provision that
21 requires the qualified contractor to pay to each of his or her
22 employees performing work under the contract a living wage, as
23 defined in this article, for work performed under that contract.

24 (B) A provision that requires the contractor to provide to the
25 department and any state agency that is a party to the qualified
26 contract a list of the subcontractors that will be performing work
27 under the contract and whether these subcontractors are qualified
28 subcontractors, as defined in this article.

29 (C) A provision that requires the contractor to provide to each
30 of his or her employees performing work under the contract a
31 notice of the wages and benefits that the employee will receive in
32 exchange for performing work under that contract.

33 (D) A provision that prohibits the contractor from terminating,
34 reducing the wages or benefits, or retaliating in any other manner
35 against an employee that reports an alleged violation of this article.

36 (2) A subcontract to a qualified contract shall contain all of the
37 following provisions:

38 (A) If the subcontractor is a qualified subcontractor, a
39 provision that requires the qualified subcontractor to pay to each
40 of his or her employees performing work under the contract a

1 living wage, as defined in this article, for work performed under
2 that contract.

3 (B) A provision that requires the subcontractor to provide to
4 each of his or her employees performing work under the contract
5 a notice of the wages and benefits that the employee will receive
6 in exchange for performing work under that contract.

7 (C) A provision that prohibits the subcontractor from
8 terminating, reducing the wages or benefits, or retaliating in any
9 other manner against an employee that reports an alleged violation
10 of this article.

11 (c) Each contractor and subcontractor that is performing under
12 a qualified contract shall submit to the department a declaration,
13 under penalty of perjury, that certifies that the contractor or
14 subcontractor:

15 (1) Has not created an entity for the purpose of avoiding the
16 requirements of this article.

17 (2) (A) In the case of a contractor, that the contractor is or is
18 not a qualified contractor.

19 (B) In the case of a subcontractor, that the subcontractor is or
20 is not a qualified subcontractor.

21 (3) (A) If a contractor is a qualified contractor, that the
22 qualified contractor will pay to each of his or her employees
23 performing work under the contract a living wage, as defined in
24 this article, for work performed under that contract.

25 (B) If the subcontractor is a qualified subcontractor, that the
26 qualified subcontractor will pay to each of his or her employees
27 performing work under the contract a living wage, as defined in
28 this article, for work performed under that contract.

29 10482. (a) When requested by the director or his or her
30 designee, a contractor or a subcontractor that performs work under
31 a qualified contract shall, during normal business hours, provide
32 access to any of the contractor's or subcontractor's records that are
33 pertinent for the director or his or her designee to determine
34 whether the contractor or subcontractor has complied with the
35 requirements of this article.

36 (b) The department may, during normal business hours,
37 conduct random audits of the employee payroll records of a
38 qualified contractor or qualified subcontractor that performs work
39 under a qualified contract.



1 (c) (1) If an employee submits a written complaint to the
2 department that a contractor or a subcontractor that performs
3 under a qualified contract is not complying with the requirements
4 of a qualified contract or the requirements of this article, the
5 department shall investigate the complaint within 10 working days
6 of the receipt of the complaint.

7 (2) A written complaint described in paragraph (1) is not a
8 public record and, to the extent that disclosure of that written
9 complaint may be otherwise required by law, the department shall
10 keep confidential any information in the complaint that may
11 identify the employee who submitted the complaint.

12 10483. (a) If the director or the department finds that a
13 qualified contractor or qualified subcontractor violated the
14 requirements of subdivision (a) of Section 10481, the Labor
15 Commissioner shall determine if the violation was intentional.

16 (1) If the Labor Commissioner determines that the violation
17 was intentional, the contractor or subcontractor, or a firm,
18 corporation, partnership, or association in which the contractor or
19 subcontractor has any interest, is ineligible for a period of not less
20 than one year or more than five years, as determined by the Labor
21 Commissioner, to do either of the following:

22 (A) Bid on or be awarded a contract with a state agency.

23 (B) Perform work as a subcontractor on a contract with a state
24 agency.

25 (2) Paragraph (1) does not apply if the Labor Commissioner
26 determines that a violation of subdivision (a) of Section 10481 was
27 not intentional.

28 (3) If the Labor Commissioner determines that a violation was
29 intentional, an employee who was not paid a living wage as
30 required shall recover from a qualified contractor or a qualified
31 subcontractor as follows:

32 (A) For the first pay period during which the violation
33 occurred, the greater of the following:

34 (i) The employee's actual damages.

35 (ii) Fifty dollars (\$50).

36 (B) For each subsequent pay period during which the violation
37 occurred, the greater of the following:

38 (i) The employee's actual damages.

39 (ii) One hundred dollars (\$100), but not to exceed four
40 thousand dollars (\$4,000) in the aggregate for that employee.

(4) If the director or the department finds that a qualified contractor or qualified subcontractor violated the requirements of subdivision (a) of Section 10481 in a manner that was not intentional, the qualified contractor or qualified subcontractor shall, within 30 days of receiving notice of the violation, fully remunerate each employee that was not paid a living wage as required. An employee may bring an action in a court of competent jurisdiction to recover unpaid wages, costs, and attorney's fees from a qualified contractor or qualified subcontractor.

(b) Not less than semiannually, the Labor Commissioner shall publish and distribute to state agencies a list of contractors and subcontractors who, as a result of this section, are ineligible to bid on or be awarded a contract with a state agency, or to perform work as a subcontractor on a contract with a state agency. The list shall contain the name of the contractor or subcontractor, the Contractor's State License Board license number of the contractor, and the effective period of debarment of the contractor or subcontractor. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor or subcontractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars (\$5,000).

(c) For the purposes of this section, the term "any interest" means an interest in an entity bidding or performing work on a contract with a state agency, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the contract with a state agency, or enters into any contracts or agreements with the entity bidding or performing work on the contract with a state agency for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of

1 the term of the debarment period. “Any interest” does not include
2 shares held in a publicly traded corporation if the shares were not
3 received as compensation after the initiation of debarment from an
4 entity bidding or performing work on a contract with a state
5 agency.

6 (d) For the purposes of this section, the term “entity” is defined
7 as a company, limited liability company, association, partnership,
8 sole proprietorship, limited liability partnership, corporation,
9 business trust, or organization.

10 (e) The Labor Commissioner shall adopt rules and regulations
11 for the administration and enforcement of this section.

12 10484. All or any part of the provisions of this article may be
13 waived in a bonafide collective bargaining agreement, but only if
14 the waiver is explicitly set forth in the agreement in clear and
15 unambiguous terms. Unilateral implementation of terms and
16 conditions of employment by either party to a collective
17 bargaining relationship shall not constitute, or be permitted, as a
18 waiver of any provision of this article.

19 10485. The department shall adopt rules and regulations for
20 the administration and enforcement of this article.

21 SEC. 5. This act may not be construed or applied to create any
22 power or duty that is in conflict with the requirements of federal
23 law.

24 SEC. 6. The provisions of this act are severable. If any
25 provision of this act or application of the provisions of this act is
26 held invalid, that invalidity shall not affect other provisions or
27 applications that can be given effect without the invalid provision
28 or application.

29 SEC. 7. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

